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Letter dated 3 October 2003 from the Secretary-General addressed to the President of the Security Council

I am attaching for your consideration and for the consideration of the members of the Security Council a letter dated 29 September 2003 from the President of the International Criminal Tribunal for Rwanda, Judge Erik Møse.

In the report which is attached to his letter, President Møse reviews the situation regarding the conduct of trials before the International Tribunal for Rwanda. On the basis of experience gained in the conduct of trials to date and in the light of information supplied by the former Prosecutor regarding ongoing investigations and possible future indictments, he projects how the Tribunal's trial activities are likely to evolve in the future. On the basis of this assessment, President Møse concludes that, if the Tribunal's judicial capacity were to remain unchanged, it would take until 2011 for the Tribunal to complete the trials of all of those persons who are currently being, or who might in the future be, prosecuted before it.

President Møse recalls in this connection that, in its resolution 1503 (2003) of 28 August 2003, the Security Council called on the International Tribunals for the Former Yugoslavia and for Rwanda to take all possible measures to complete all trial activities at first instance by the end of 2008.

In order that the Tribunal may be better placed to achieve that target, President Møse requests that the Security Council amend the statute of the International Tribunal for Rwanda so that the Tribunal would be authorized to make use of up to nine ad litem judges at any one time, rather than a maximum of four, as at present. The International Tribunal for Rwanda would then enjoy the same judicial capacity for conducting trials at first instance as the International Tribunal for the Former Yugoslavia.

President Møse forecasts that, if the Tribunal were to benefit now from the increase in judicial capacity that he requests, then it would most probably be able to complete all trial activities at first instance by the target date of the end of 2008 that the Security Council has set, or would at least be able to come very close to achieving that target.

In the event that the Security Council were to accede to President Møse's request, the General Assembly would then be asked to approve the related increase that would be required in the budget of the International Tribunal for Rwanda.

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The preliminary estimated costs of adopting the proposal of the President of the International Tribunal for Rwanda for an additional five ad litem judges and the support staff will be $12.4 million for the biennium 2004-2005.

In the report that is attached to his letter, President Møse notes that his present request is additional to the request contained in his letter of 8 September 2003 (see S/2003/879, annex), that the Security Council amend the statute of the International Tribunal for Rwanda so that, during the period in which an ad litem judge is appointed to serve in the Tribunal for a trial, he or she can also adjudicate in pre-trial proceedings in other cases.

I should be most grateful if you could bring the present letter and its annex to the attention of the members of the Security Council.

(*Signed*) Kofi A. **Annan**

Annex

Letter dated 29 September 2003 from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General

I am writing to you to request an increase in the number of ad litem judges who can serve at the International Criminal Tribunal for Rwanda (ICTR) at any one time, from four to nine. The ICTR Completion Strategy is enclosed (see enclosure).

On 14 August 2002, the Security Council adopted resolution 1321 (2002), in which the Council created a pool of 18 ad litem judges. In its request of 9 July 2001, ICTR had asked for nine ad litem judges to be used at any one time. This was in conformity with the solution adopted by the Security Council in its resolution 1329 (2000) on the International Criminal Tribunal for the Former Yugoslavia (ICTY). The Security Council only authorized ICTR to use four ad litem judges. However, during its deliberations, the Security Council indicated that it would keep this matter under review. On 25 June 2003, the General Assembly elected 18 ad litem judges.

The first ad litem judge took office on 1 September 2003 and has been engaged in the Ndindabahizi trial (one accused), where the Prosecution is now closing its case. Three other ad litem judges will arrive in the second half of October 2003, subject to their appointment by the Secretary-General, in order to participate in trials in the two so-called "Government Cases", each involving four accused, which are scheduled to commence on 3 November 2003. In these cases, the two Trial Chamber sections will be composed of one permanent judge and two ad litem judges, and of two permanent judges and one ad litem judge, respectively.

The addition of four ad litem judges makes it possible to constitute only four Trial Chamber sections. Three permanent judges in a reconstituted Chamber have heard the Military trial (four accused) since 3 June 2003. In the Butare trial (six accused), one of the permanent judges was not re-elected. In resolution 1482 (2003), the Security Council did not prolong his mandate to complete that case. On 15 July 2003, the Trial Chamber decided that the trial should continue with the remaining two permanent judges and a substitute judge in pursuance of the newly amended rule 15 bis of the Rules of Procedure and Evidence. Appeals against this decision were dismissed on 24 September 2003. Therefore, the Butare trial will continue with the two remaining permanent judges and, subject to the appointment by the Secretary-General, one ad litem judge (who is about to finish the Ndindabahizi trial, see above). In sum, from November 2003, eight permanent judges and four ad litem judges will be hearing four trials (Military, Butare, Government I and II).

With nine ad litem judges, it would have been possible to create six Trial Chamber sections. In ICTY, this has been the situation for about two years. There is no reason to treat the two ad hoc Tribunals differently. On 28 August 2003, the Security Council adopted resolution 1503 (2003), according to which both Tribunals shall complete trials by the end of 2008. ICTR has prepared the enclosed Completion Strategy, as requested by the resolution. It demonstrates the need for nine ad litem judges, to place ICTR in a position to complete its work by 2008.

By the end of 2003, ICTR will have handed down judgements involving 21 accused, with a further 20 detainees on trial. ICTR is anxious to start the trials of the remaining 22 detainees as soon as its Trial Chamber capacity makes it possible. An

additional number of ad litem judges would, for instance, enable ICTR to establish an additional Trial Chamber section composed of the ninth permanent judge and two ad litem judges.

The current number of four ad litem judges seriously reduces the possibility to efficiently plan new trials. Experience has shown that it is most efficient for a Trial Chamber to hear one big and one small case in consecutive slots (twin tracking), unless the big case is particularly voluminous and complex. Judicial efficiency has also been increased by the so-called "shift-system", which implies that one courtroom is used for two cases, heard in morning and afternoon sessions, respectively. It is important to use single judges from different Trial Chamber sections in order to maximize the judicial output (see paras. 29 and 35 of the enclosed Completion Strategy). At present, it is difficult to make full use of these methods unless one or more judges sit in two different trials on the same day. This is not a durable solution because it would mean that a judge will, for long periods of time, be engaged in trial from 8.30 a.m. to 7 p.m. each day, in addition to other judicial work. The lack of flexibility created by the limited number of ad litem judges seriously limits the possibility of ICTR to complete its mandate in a timely fashion. According to present estimates, only 8 out of a maximum number of 42 persons (16 indictees and 26 suspects) at large can be tried by the target date with the present resources. Further projections are provided in the enclosed Completion Strategy.

In order for ICTR to complete its work by 2008, as requested by the Security Council, there is an immediate need to increase the number of ad litem judges utilized by ICTR at any one time, from four to nine.

(*Signed*) Erik **Møse**
President

Enclosure

Completion Strategy of the International Criminal Tribunal for Rwanda

SUMMARY

This document outlines the completion strategy of the International Criminal Tribunal for Rwanda (ICTR), based on the information available as of 29 September 2003, and in view of Security Council resolution 1503 (2003), adopted on 28 August 2003.

Trials of 21 persons are either completed or at the judgement writing stage; four trials involving 12 persons are in progress; two new trials of eight accused are scheduled to commence on 3 November 2003; trials of the remaining 22 detainees will start from 2004 onwards, depending on the Trial Chamber availability.

In addition, 16 indicted persons are still at large. Moreover, the Prosecution is presently conducting 26 remaining investigations, which will be completed by the end of 2004. This could result in a maximum of 26 new indictments by July 2005. However, the number of trials will involve less than 42 persons from these two groups. Some of them may not be apprehended and others may be dead.

The number of persons that may be brought to trial at the ICTR from 2004 onwards (22 remaining detainees, 16 indictees at large, 26 suspects) are based on the maximum figures indicated in the previous Prosecutor's completion strategy of 29 April 2003. As mentioned above, the real number will be lower. The newly appointed Prosecutor for the ICTR is now in the process of reviewing all the files. He has confirmed that there is a possibility that these figures will be revised downwards. The present document is based on the figures indicated in the April 2003 strategy. In view of Security Council resolution 1503 (2003), an attempt is made to indicate the number of persons that may be tried by the ICTR by the end of 2008.

With four *ad litem* judges supplementing the Trial Chambers from September 2003 onwards, the trials of the 42 detainees at trial or awaiting trial could be completed by 2007. The maximum of 16 indictees that are still at large could be completed by 2009. Trials of the maximum of 26 suspects who have not yet been indicted could be completed by 2011. By the target date of 2008, about eight of these 42 persons (16 indictees and 26 suspects) at large will have been tried.

On 29 September 2003, the ICTR submitted to the Security Council a request to increase the number of *ad litem* judges sitting "at any one time" from four to nine. If the ICTR Statute is amended in this way, it is estimated that the trials involving a maximum of about 16 indictees could be completed by 2008, and up to 26 suspects at large by 2009 or 2010. By the end of 2008, the ICTR would be able to hear trials involving a maximum of 30 persons from these two groups of 42 persons (16 indictees and 26 suspects) at large.

On 8 September 2003, the ICTR submitted its request to the Security Council to allow *ad litem* judges to adjudicate in pre-trial matters and prepare cases for trial. This statutory amendment will also contribute to a more efficient completion strategy.

I. Introduction

1. The present document contains an up-dated and revised version of the ICTR completion strategy as of 29 September 2003, in view of Security Council resolution 1503 (2003).[1] It has been progressively elaborated on based on contributions from the Prosecution, the Registry and the Presidency. The original basis for the consultations between these three organs was a document entitled "Completion Strategy of the Office of the Prosecutor", containing developments as of 29 April 2003. It is available on request.

2. The document sets out projections that have been premised on information available as of 29 September 2003. It is evident, however, that the process of pursuing a completion strategy is a continuous one that must allow for revisions as the cases are heard and practice develops. Up-dated versions of the strategy will be submitted as the need arises. The newly appointed Prosecutor for the ICTR is now in the process of reviewing all the files.

3. Since the first trial started in January 1997, the ICTR has handed down 11 judgements involving 13 accused. Of these, 12 were convicted and one acquitted. Six of them are presently serving their sentences in Mali. By the end of 2003, it is expected that the ICTR will have delivered four judgements involving eight accused, bringing the total result of the second mandate (1999-2003) to nine judgements involving 14 accused.[2] This is a doubling of the number of accused that have been tried, when compared to the first mandate (1995-99). Consequently, the ICTR will, by the end of 2003, have rendered 15 judgements involving 21 accused since the first trial started in 1997 (following the arrival of the first accused in Arusha in May 1996). As of July 2003, three cases are on appeal (Elizaphan and Gérard Ntakirutimana; Eliézer Niyitegeka; Laurent Semanza).[3]

4. In addition to the 21 accused whose trials have either been completed or are at the stage of judgement writing, 42 detainees in the United Nations Detention Facilities in Arusha are either engaged in trial or awaiting trial. As of 22 September 2003, trials in the Butare Case (six accused), the Military Case (four accused), the Gacumbitsi Case (one accused) and the Ndindabahizi Case (one accused) are in progress. The Butare and Military Cases are very voluminous and the trials are at a relatively early stage. Moreover, two trials each involving four accused (the two so-called "Government Cases") are scheduled to start on 3 November 2003. It is therefore anticipated that 20 of the remaining 42 detainees will be on trial by the end of 2003. The remaining 22 accused will have their cases heard when the Tribunal's capacity so allows. One or two single accused cases may commence in the first half of 2004.

5. Furthermore, 16 accused are at large. It may well be that some of them are dead or may not be found. The actual number of these persons actually brought to trial will be less than 16.

6. The Prosecutor's strategy is to prosecute before the ICTR, those persons bearing the highest responsibility for the crimes committed in Rwanda in 1994. The Prosecutor is currently investigating 26 suspects and intends to complete these investigations by the end of 2004. At this stage, it is uncertain how many of these targets will actually result in indictments. These indictments will be submitted for confirmation no later than July 2005.

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[1] A first version of the ICTR completion strategy was submitted to United Nations Headquarters on 14 July 2003. That document was prepared notably within the context of General Assembly resolution 56/289 (2003) para. 15 (a), which provided that the proposed budget of the ICTR for 2004-5 should include "detailed information as to how the resources requested for the biennium would support the development of a sound and realistic completion strategy".

[2] Trial Chamber III expects to deliver its judgement in the *Cyangugu* case by the end of 2003 or, at the latest, in February 2004.

[3] It is difficult at this stage to indicate a completion strategy for the ICTR Appeals Chamber, as it is linked to the ICTY completion strategy. It is recalled, however, that all ICTR judgements except one have been appealed, and that Security Council resolution 1503 (2003) provides that all work of the ICTR and the ICTY shall be completed by 2010.

7. Moreover, the Prosecutor has identified about 40 other suspects that could be tried by national jurisdictions and is currently engaged in discussions with some States for this purpose. In the event that it is not possible to transfer some of these cases to national jurisdictions, the Prosecutor will return to the Security Council with alternative proposals.

II. Overview

8. During the ICTR's second mandate, the most voluminous case heard by Trial Chamber I was the so-called "Media Case" involving three accused (Barayagwiza, Nahimana and Ngeze). The trial started on 23 October 2000, and judgement is expected by the end of 2003. Originally, the Media trial was being conducted contemporaneously with the preparation of judgement in the Bagilishema Case, in which judgement was delivered on 7 June 2001. It was twin-tracked with the trial of Gérard and Elizaphan Ntakirutimana which began on 18 September 2001 and concluded with the judgement on 19 February 2003. The Media Case was then twin-tracked with the Niyitegeka trial, which started on 17 June 2002 and concluded with judgement on 16 May 2003.[4] Following the commencement of the third mandate, Trial Chamber I has been reconstituted and sits on the continuation of the Military Case (four accused), transferred from Trial Chamber III. It is also hearing the Ndindabahizi trial (one accused).

9. In the second mandate, Trial Chamber II was engaged in three trials concurrently. The Butare trial started on 11 June 2001 and has so far been conducted over 107 trial days. This is a trial of six accused, which is the largest number tried jointly before the ICTR (Kanyabashi, Nyiramsuhuko, Ntahobali, Nsabimana, Nteziryayo and Ndayambaje). One of the judges in this Chamber did not have his mandate extended for the purpose of enabling him to continue sitting on the Butare Case. On 15 July 2003, the Trial Chamber decided that the trial should continue with a substitute judge under Rule 15*bis* of the Rules of Procedure and Evidence ("the Rules"). Appeals against this decision was dismissed by the Appeals Chamber on 24 September 2003. The Trial Chamber is writing judgements in the Kajelileli case, the trial in which started on 12 March 2001, and the Kamuhanda case, which commenced on 17 April 2001. Judgements will be rendered before the end of 2003.

10. Trial Chamber III heard three trials concurrently during the second mandate. The Cyangugu trial involving three accused (Bagambiki, Imanishimwe and Ntagerura) started on 18 September 2000. Judgement is expected by December 2003 or at the very latest by February 2004. The Semanza trial commenced on 16 October 2000 and judgement was given on 16 May 2003. On 2 April 2002, the Chamber also started the Military trial involving four accused (Bagasora, Nsengiumva, Kabiligi, and Ntabakuze) and heard evidence over 32 trial days. Following the reconstitution of the Chambers in early June 2003, this case is now being heard by Trial Chamber I (see para. 8 above).

11. The time needed to complete the on-going trials is summarized in Table 1 below. In the Butare Case, about 65 Prosecution witnesses will be called, requiring an estimated 330 hours for the presentation of the Prosecution case-in-chief. For the Military trial, it is assumed that about 100 witnesses will be called by the Prosecution, totaling an estimated 500 hours for its examination-in-chief. Hence, these two cases, involving a total of ten accused, will be time-consuming. It is envisaged that judgements will be delivered some time in 2005.

[4] "Twin-tracking" implies that two trials are heard in consecutive slots, for instance according to the following pattern: Trial A five weeks, trial B five weeks, trial A five weeks, etc. Defence counsel in trial A will leave Arusha while trial B is heard. The purpose of this system is to use inevitable breaks during one trial to ensure progress of another case. Such breaks allow the Prosecution and the Defence to prepare for the next stage of the proceedings (for instance by interviewing witnesses etc.).

TABLE 1: TRIALS IN PROGRESS

Accused	Function	Case	Judgement
A. Nteziryayo	Prefect of Butare	Butare	2005
S. Nsabimana	Prefect of Butare	Butare	2005
P. Nyiramasuhuko	Minister of Family and Women's Affairs	Butare	2005
E. Ndayambaje	Bourgmestre of Muganza	Butare	2005
J. Kanyabashi	Bourgmestre of Ngoma	Butare	2005
A. S. Ntahobali	Interahamwe leader	Butare	2005
T. Bagosora	Dir. Of Cabinet, Ministry of Defence	Military I	2005
G. Kabiligi	Brigadier-General	Military I	2005
A. Ntabakuze	Battalion Commander	Military I	2005
A. Nsengiyumva	Lieutenant-Colonel	Military I	2005

12. Following the ICTR's request of 9 July 2001, the Security Council adopted Resolution 1431 of 8 August 2002, which enabled the creation of a pool of 18 *ad litem* judges. The purpose of this reform, which followed a similar Security Council resolution for the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 2000, is to increase the Tribunal's judicial capacity. The election of the 18 *ad litem* judges by the General Assembly took place on 25 June 2003. The ICTR is authorized to use a maximum of four such judges at any one time. The first *ad litem* judge took office on 1 September 2003 and is currently sitting in the Ndindabahizi trial. Three other *ad litem* judges will arrive in October 2003. Their presence will enable a Trial Chamber to split into two sections.

III. Trial-Ready Cases

13. As mentioned above (para. 4), two trials involving eight accused are scheduled to start on 3 November 2003, Nzirorera et al. and Bicamumpaka et al. (often referred to as the "Government Cases"). At this stage, it is difficult to estimate the date of completion of the trial proceedings in these two voluminous cases. The situation can be summarized as follows:

TABLE 2: TRIAL-READY CASES

Name	Former Title	Initial Appearance	Estimated end of trial
J. Nzirorera	National Assembly President; S-G MRND	7 Apr. 1999	2004-5
E. Karemera	Minister of Interior, V-P of MRND	7 Apr. 1999	2004-5
A. Rwamakuba	Minister of Education	7 Apr. 1999	2004-5
M. Ngirumpatse	D-G of Ministry of Foreign Affairs, President of MRND	7 Apr. 1999	2004-5
J. Bicamumpaka	Minister of Foreign Affairs	17 Aug. 1999	2004-5
C. Bizimungu	Minister of Health	3 Sep. 1999	2004-5
J. Mugenzi	Minister of Commerce	17 Aug. 1999	2004-5
P. Mugiraneza	Minister of Civil Service	17 Aug. 1999	2004-5

IV. Trial-Ready Cases From 2004 Onwards

14. Trials of the remaining 22 detainees will commence from January 2004 onwards. Available information at this stage, indicates that at least one of these cases could start in early 2004, subject to the availability of a Trial Chamber section. The situation can be summarized as follows:

TABLE 3: OTHER DETAINED PERSONS: 22

Name	Former Title	Initial Appearance	Joinder case
A. Seromba	Priest, Kivumu Commune	8 Feb. 2002	
M. Muhimana	Councillor of Gishyita	24 Nov. 1999	
J. Mpambara	Bourgmestre of Rukara	8 Aug. 2001	
I. Hategekimana	Lieutenant, Commander of Ngoma Camp, Butare	28 Feb. 2003	With Muvunyi?
T. Muvunyi	Commander, Ecole Sous-officiers	8 Nov. 2000	With Hategeki-mana?
A. Ndindilyimana	Chief of Staff of Gendarmerie	27 Apr. 2000	Military II
F-X Nzuwonemeye	FAR Battalion Commander	25 May 2000	Military II
I. Sagahutu	2IC of Reconn. Battalion	28 Nov. 2000	Military II
A. Bizimungu	Chief of Staff of FAR	21 Aug. 2002	Military II
S. Nchamihigo	Deputy Prosecutor	29 Jun. 2001	
E. Rukundo	Chaplain	26 Sep. 2001	
P. Zigiranyirazo	Businessman	10 Oct. 2001	
F. Karera	Prefect of Kigali Rural	26 Oct. 2001	
P. Bisengimana	Bourgmestre of Gikoro	18 Mar. 2002	
A. Simba	Lieutenant-Colonel in FAR	18 Mar. 2002	
V. Rutaganira	Councillor of Mubuga	26 Mar. 2002	
J. Nzabirinda	Youth Organizer	27 Mar. 2002	
S. Bikindi	Musician	4 Apr. 2002	
H. Nsengimana	Rector of Christ-Roi College	16 Apr. 2002	
J.-B. Gatete	Bourgmestre of Murambi	20 Sep. 2002	
T. Renzaho	Prefect of Kigali	21 Nov. 2002	
J. Rugambarara	Bourgmestre	15 August 2003	

15. It is worth noting that one of these accused has been in custody since November 1999. The ICTR is anxious to give priority to his case when there is an available Trial Chamber section. Another observation to be made is that there is only one large case in this group of 22 detainees (the Military II case, which involves four accused). Consequently, once the large trials mentioned under II and III above have been completed (Butare; Military I, Nzirorera et al.; Bicamumpaka et al.), the Tribunal's remaining case-load relating to present detainees will consist mainly of single-accused cases which require less court time.

V. Resulting Workload (Accused at Trial or Awaiting Trial)

16. The time needed for the completion of the cases involving the 42 detainees mentioned above (II-IV) is difficult to predict. One method is to use the Prosecutor's estimates of the number of witnesses and the number of hours needed to present her case in examination-in-chief. These estimates, presented

in Annex 1, indicate that 3,680 hours will be needed by the Prosecution to present its 794 witnesses for these 24 cases involving the 42 detainees.

17. The Prosecution's examination-in-chief is followed by the Defence cross-examination. The length of this depends on factors relating to each individual case. Experience shows that in cases involving a single accused, the Defence cross-examination of the Prosecution witnesses will generally not be much longer than their examination-in-chief. It may also be shorter. In cases with several accused, the total time taken for cross-examination often exceeds the time taken in examination-in-chief, particularly if the witness gives evidence implicating more than one or all accused. Under these circumstances, it is assumed, as a working tool, that the total time taken for the cross-examination of the Prosecution witnesses by the Defence will normally not exceed the total time taken for the Prosecution examination-in-chief, when all cases are considered as a whole. In this context, it is also taken into account that the Prosecution's list of witnesses has usually been reduced during trial.

18. Once the Prosecution case is completed, the presentation of the Defence case begins. Information about Defence cases is difficult to obtain, in particular because most of these cases have not yet started and there is the issue of confidentiality when it comes to Defence strategy. As a working tool, it is assumed that the time needed for the presentation of the Defence case should not exceed the time required for the presentation of the Prosecution case. The practice of the ICTR shows that it may often take less time, particularly in trials of single accused.

19. Based on these premises, it is projected that the ICTR needs about 12,878 hours to complete the taking of testimony in the cases of the 42 detainees. This represents a total of approximately 310 hours of trial evidence or approximately 62 trial days per accused. These are only estimates. Due consideration should also be given to the need for additional time required at trial, for instance to hear closing arguments (normally between two and five days, depending on the number of accused) and for interlocutory motions. Judgement writing also takes time.

20. As mentioned above, the Prosecution usually reduces the number of witnesses as the trial unfolds. Furthermore, the Chambers exert considerable control over these variables, for instance by restricting the length of examination-in-chief of both parties and to restrict cross-examination. Therefore, there is reason to believe that the real time spent in court may be less. Trials so far completed show an average number of trial days per accused of about 62. Recently completed cases seem to indicate a lower number per accused (Elizaphan and Gérard Ntakirutimana: 30 trial days per accused; Niyitegeka: 35 trial days per accused). It is expected that this trend towards shorter trials will continue. However, at present it is considered prudent to use the figure of 62 trial days per accused as a working tool.

VI. Workload Relating to Persons At Large

21. It is recalled that 16 indictees are at large. If arrested, they would represent an additional workload. According to the Prosecutor, some of these indictees may be dead, whereas others may never be arrested. The Prosecutor intends to complete 26 remaining investigations by the end of 2004. These investigations will result in a maximum of 26 new indictments, which will be submitted for confirmation by July 2005. It is noted that the actual number of resulting indictments will be less.

22. The Prosecutor's plan to investigate and indict a maximum of 26 persons, further added to the 16 indictees still at large, could suggest that the ICTR might have to project trials for a further 42 accused persons. Based on the working formula in this document, it is projected that the hearing of testimony in the trials of 42 accused could take 13,020 hours over a period of 2,604 trial days (62 trial days per accused). Again, it is stressed that the number of accused brought for trial will be less than 42, and that

the number of trial days per accused may be reduced. The newly appointed Prosecutor for the ICTR is presently reviewing the files of these 42 persons.

VII. Transfer of Cases by the Prosecutor to National Jurisdictions

23. The Prosecutor has identified about 40 cases that could be transferred to national jurisdictions for trial (Rule 11*bis*). The intention is to transfer, in some cases, files in respect of which investigations have been completed and are trial ready and, in other cases, dossiers requiring further investigations by the receiving country. The latter will take place, in particular, in respect of those countries in which some of the targets are already resident. The Prosecutor plans to transfer some of these cases to Rwanda for trial. At the moment, transfer is made difficult by the fact that Rwandan law prescribes the death penalty as a sentence for certain crimes. The Prosecutor has started discussions with various states in order to reach agreements to prosecute some of the cases, including cases that are transferred in terms of Rule 11*bis*. Transfer is not envisaged during the 2004 and 2005 biennium. The costs to be incurred during the biennium regarding the transfer of cases to national jurisdictions, will largely be costs relating to travel and negotiations with the relevant states.

24. In the event that it is not possible to transfer some of the cases to national jurisdictions, the Prosecutor plans to return to the Security Council with alternative proposals. The newly appointed Prosecutor for the ICTR is presently reviewing these files.

VIII. Total Remaining Workload

25. A maximum number of trial days required for the completion of the work of the Trial Chambers can be projected based on a combination of estimates for the present detainees and the future accused persons. With a number of 84 accused (including the 16 indictees and the 26 suspects referred to above), and an estimate of 62 trial days per accused, the total number of trial days would amount to 5,208.

26. In 2002, the three Trial Chambers sat a total of 414 trial days. In 2001, the Chambers sat a total of 340 trial days. Examination of the Chambers' actual sitting times shows that the amount of time that a Chamber was able to devote to trial in each of the last two years was between 135 trial days in 2001 and 150 trial days in 2002. Factors contributing to lowering the number of trial days included the difficulty to obtain the appearance of witnesses from Rwanda and judges' and counsels' illness.[5]

27. The ICTR has taken several steps to ensure that such factors are minimized in the future. In particular, the Rules have been amended to allow for a Trial Chamber to continue the trial in the eventuality of a judge being ill or absent. In the event of a longer term of absence, the relevant provision has been amended to allow cases to continue in certain circumstances (Rule 15*bis*). The insistence by the Trial Chambers on having two counsel and, in the event of illness or absence of one counsel, requiring the remaining counsel to continue, will reduce the occurrence of interruptions of trials. At present, witnesses from Rwanda are appearing before the ICTR. It is important that this situation continues. The Tribunal is anxious to ensure that the number of trial days from 2004 onwards, be higher than in the last two years.

28. Experience shows that it is difficult to ensure that witnesses are always available, even with the use of additional witnesses present in Arusha in case of unavailability. A frequent situation in practice, is that Prosecution or Defence Counsel requires additional time to prepare witnesses for examination-in-chief. The Chambers also have to allow Prosecution and Defence additional time for the preparation

[5] In 2001, some time was lost because of the death of one judge.

of cross-examination in situations where unexpected evidence emerges or evidence is tendered without proper prior notice. Sufficient time is needed for judgement-writing responsibilities, pre-trial hearings and deliberation on motions. These circumstances combined with illness and other forms of unavailability of witnesses do not only reduce the number of trial days but also the number of sitting hours per trial day.[6] Nevertheless, the Chambers will continue their efforts to increase the time spent in the court room.

29. An important measure to increase court room time is the possibility of establishing, as a matter of urgency, a fifth Trial Chamber section (even with only four *ad litem* judges available). This will make it possible to use single judges from different Chambers in a section with judges sitting in periods when there is an available slot between other trials in which they are engaged, or sitting both in morning and afternoon shifts. It also provides flexibility to establish different composition of sections in order to maximize the judicial output (by allowing, for instance, one of the judges to devote maximum time to judgement-writing during an available slot). During the discussions of the biennium budget for 2004-5, the ICTR has stressed the need to provide sufficient resources to establish a fifth section. It is also important to bear in mind the ICTR request to the Security Council, dated 29 September 2003, to increase the number of *ad litem* judges who can sit at any one time, from four to nine. This would maximize the judicial output. It is important to have a sufficient administrative infrastructure available for this scenario immediately.

30. With the present number of four *ad litem* judges, one Trial Chamber sitting in two sections operating in a shift-system, two other Trial Chambers sitting five hours a day, and a fifth "combined" Trial Chamber Section sitting when there are available judges, the trial capacity from November 2003 would be between 600 and 700 trial days per year, and possibly more, depending on the exact output of the fifth section. This can be achieved with three court rooms (even if it is preferable to have a fourth court room). It is recalled that the ICTY has six sections operating in shifts with three court rooms.

VIII. Past And Present Strategies

31. **Pre-trial Stage**: Four years ago, in June 1999, there were a considerable number of pending pre-trial motions. The previous Prosecutor originally required the joinder of a large number of accused in one case, at one point asking for the confirmation of a joint indictment for over 20 suspects. The Confirming Judge denied the request. The Prosecutor then asked for joinder of smaller numbers of accused, who allegedly participated in the same criminal transaction, such as the use of public media, the actions of military officials, government officials, or alleged crimes in certain geographical areas of Rwanda (Butare, Cyangugu). This led to a considerable number of motions from the Prosecution requesting amendments of indictments and the joinder of accused. In addition, a large number of motions were filed by the Defence.

32. Consequently, the first priority for the Chambers four years ago was to reduce the number of motions in order to move cases to the trial stage. To facilitate this, the judges amended the Rules in order to allow for motions to be considered on brief, decided orally or in writing, and by a single judge. These measures taken to reduce the workload of outstanding motions increased the efficiency of the Chambers and reduced costs in connection with oral hearings of motions. After having reduced the number of pending motions to a minimum, full translation and disclosure of documents was ordered for use in the pending trials before all three Trial Chambers could proceed to trial.

[6] In 2003, there has been disruption to trial schedules because some of the judges were not re-elected. This required reconstitution of Chambers and reorganization of the work.

33. Additionally, Rule changes were adopted by the judges in the Plenary to regulate the pre-trial process and to restrict the number of interlocutory appeals that were delaying the pre-trial work of the Chambers. Through pre-trial and pre-defence status conferences, a Trial Chamber has the authority to order the disclosure of information from the parties and, in particular, the parties may be ordered to file briefs addressing the factual and legal issues, identifying contested matters, and provide a list of witnesses intended to be called, with a summary of the facts and the specific allegations in the indictment on which the witnesses will testify. Additionally, the parties must give an estimate of the time that will be taken by each witness to give their evidence, and the Trial Chamber may order a reduction in the number of witnesses and the time for witnesses to give evidence-in-chief. The Trial Chamber may also demand information on the status of exhibits (Rules 73*bis* and *ter*).

34. A more recent step was the establishment of the New Trials Committee, which is composed of representatives of Chambers, various sections of the Registry and the Prosecution. The Committee has facilitated the trial-readiness of several new cases. Furthermore, during the recent Plenary in May 2003, the judges instituted a Pre-trial Working Group to submit proposals to expedite pre-trial work.

35. **The Trial Stage:** All Trial Chambers have been conducting trials on a twin-track basis (in some instances also on a "triple-track" basis). This strategy resulted in the production of a considerable number of judgements in 2003. However, twin-tracking of two big cases (or even three) is cumbersome. Experience shows that the best model is to twin-track one big and one small case, and this strategy will be followed in the future, unless the big case is particularly voluminous and complex. The ICTR will also use the so-called "shift system", which implies that one court room is used for two cases heard in morning and afternoon sessions, respectively. The shift system operates in a morning shift from, for instance, 8.30 to about 13.30, and an afternoon shift until about 19.00. A test project in October 2002 gave promising results, and it has been used by Trial Chamber I in September 2003 (hearing the Military trial in the morning and the Ndindabahizi case in the afternoon).

36. In spite of these measures to accelerate the proceedings, cases will still be time-consuming. It should be remembered that conducting judicial proceedings at the international level is a more complicated task than at the national level. The cases at the *ad hoc* Tribunals are legally and factually very complex; there is a considerable volume of documents required in trying alleged architects of the atrocities, including high-ranking members of the government; the documents are all subject to disclosure and must be translated for legal teams and accused, who may require translations of all the documents into an official language of the Tribunal before they respond to motions or undertake trial preparation; the number of witnesses is often considerable in joinder cases, and simultaneous interpretation of all testimony is required into three languages; witnesses have often to be extracted from a difficult environment, afforded considerable protection before and after testimony and sometimes re-located; the staff and counsel involved in cases come from different cultures and traditions and effective communication requires new skills and extra effort; Defence and Prosecution counsel come from all over the world, have different court-room styles; Defence counsel have to leave their other case-work for considerable periods to spend time working at the ICTR in Arusha, usually away from their practices.

37. With the change of the ICTR from one centered on investigation and arrests, to one centered on trials, the Registry will focus its attention on the end-date for the Tribunal in all its work places. No contract will be entered into, no item of equipment purchased, no personnel recruited without a consideration of how the closing of the Tribunal will affect the issue and how it will, in turn, affect the completion strategy.

38. In assessing its needs for human resources with a view to promoting the implementation of its completion strategy, the Prosecution envisages an increase in the number of trial teams. This increase will be addressed by redeployment. The Prosecution expects that at the anticipated conclusion of investigations at the end of 2004, some posts presently held by investigators could be re-deployed to increase the number of trial attorneys, legal advisors and other staff required for trial. The Prosecution intends to maintain ten trial teams which should meet the need arising from the anticipated increase in the number of trials.

IX. Conclusions

39. Based on the current trial capacity and the estimated work-load outlined above, it is possible to draw the following conclusions.

40. The cases involving the present 42 detainees at trial or awaiting trial represent an estimated workload of 12,877 hours, over 2,576 trial days. It is estimated that five Trial Chamber sections (of which one will operate subject to a sufficient number of available judges, as explained in para. 29 above) can produce 3,375 trial hours, over a period of 675 trial days per year.[7] Based on this premise, the trials of these detainees could be completed in about four years, or by 2007. It is important to stress that this is only an estimate.[8]

41. Turning to the 16 indictees at large, it is estimated that their trials would require approximately 992 days. On the same basis as above, five Trial Chambers sections would produce 675 trial days (or 3,375 hours, see above) per year. Therefore, the trials of all these accused would take approximately one and a half years. If they were immediately to follow the above-mentioned trials, they could be completed by 2009. Again, it is recalled that this is a maximum number and that the number of these accused will most probably be less.

42. Examining now the maximum number of 26 indictments which may be issued as a result of ongoing investigations, it is estimated that they would lead to an additional need for 1,612 trial days in order to be completed, or about two years and four months, based on an average of 62 trial days per accused. If this is added to the projections made above, these trials would be finalized by 2011. Once again, it is recalled that the actual number of persons brought for trial is expected to be less.

43. In its resolution 1503 (2003), the Security Council urged the ICTR and the ICTY to complete all trials by 2008. It is clear from the projections made above that, based on the existing judicial capacity, it is impossible to complete all trials by 2008. With the present resources, it is estimated that the ICTR would, by that target date, be able to complete trials involving about eight of the 42 persons (16 indictees and 26 suspects) at large.

44. An important reform would be to increase this judicial capacity by having more *ad litem* judges take office at the ICTR at any one time. On 29 September 2003, the ICTR requested the Security Council to increase the number of *ad litem* judges sitting at any one time, from four to nine.

45. With nine *ad litem* judges, the Tribunal would be able to set up six Trial Chamber sections. These six sections will be able to produce 4,500 hours of trial work over 900 trial days per year. Based on the estimates made above (paras. 16-20), trials of the 42 detainees who are either presently on trial or are

[7] This calculation is based on four Trial Chamber sections conducting 150 trial days per year and the fifth section conducting 75 trial days per year.

[8] The projections in this section differ in some respects from those contained in the ICTR's request for *ad litem* judges, dated 9 July 2001 (A/56/265). The main reasons are that the number of detainees has increased; the Security Council granted only four *ad litem* judges at any one time; and these judges will only be available from September 2003 (not at the end of 2002, as originally envisaged).

awaiting the commencement of their respective trials, could be completed by 2006. The 16 indictees at large could be completed by 2008, provided they are all timely arrested and their trials commence immediately after the completion of the trials mentioned above. The trials resulting from the 26 indictments yet to be confirmed, could be completed by 2009-2010, provided they commence immediately after the trials of the 16 indictees mentioned above. By the end of 2008, it is estimated that the ICTR could hear trials of a maximum of 30 of the 42 persons (16 indictees and 26 suspects) at large.

46. The above projections may have to revised. It has already been mentioned that the estimated number of Prosecution witnesses may, in fact, be reduced during trial, and that the average number of trial days per accused may be less (see para. 20). Moreover, under Rule 11*bis*, a Trial Chamber may order that the indictment against an accused be suspended pending proceedings against him before a national court. This provision, which was inserted during the 12th Plenary Session, may assist in reducing the number of cases heard by the Trial Chambers. On the other hand, unforeseen factors may delay proceedings.

47. Guilty pleas reduce the length of trials. Experience shows that not more than a day is needed for a Chamber to satisfy itself that a guilty plea is informed, unequivocal and made freely and voluntarily. The writing of the judgement requires a few weeks.[9] It is difficult at this stage to estimate how many accused this may involve. However, it is worth noting that at the 13th Plenary Session, the Rules were amended, providing a legal basis for plea bargaining.

48. On 19 May 2003, the Security Council adopted Resolution 1481 (2003), which allows *ad litem* judges to adjudicate in pre-trial proceedings at the ICTY. (The ICTR's original request for *ad litem* judges contained this proposal, but was rejected.) The ICTR remains of the view that there is no reason in principle or in practice for *ad litem* judges not being assigned tasks at the pre-trial stage. This would accelerate the proceedings. On 8 September 2003, the ICTR submitted a proposal to the Security Council for an increase in the competence of *ad litem* judges, allowing them to adjudicate over pretrial matters and participate in the preparation of cases for trial.

49. As mentioned previously, the present document is part of the continuing process of refining a completion strategy. The ICTR welcomes contributions to this process.

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[9] The following judgements were based on guilty-pleas: ***Prosecutor v. Jean Kambanda*** (1998); *Prosecutor v. Omar Serushago* (1999); *Prosecutor v. Georges Ruggiu* (2000).

Annex 1: Prosecutor's Figures for Trials of Present Detainees

	Case	No. of Accused	No. of Pros. witnesses	No. of hours for Pros. case-in-chief
1	Butare	6	65	330
2	Military I	4	100	500
3	Muvunyi and Hategikimana	2	43	180
4	Seromba	1	20	100
5	Ndindabhizi	1	15	50
6	Military II	4	90	500
7	Government I	4	50	300
8	Government II	4	45	300
9	Zigiranyirazo	1	30	100
10	Bikindi	1	30	100
11	Renzaho	1	30	100
12	Simba	1	41	170
13	Bisengimana	1	15	50
14	Karera	1	15	50
15	Mpambara	1	30	150
16	Gacumbitsi	1	30	120
17	Rukundo	1	20	80
18	Nzabirinda	1	15	60
19	Nsengimana	1	15	60
20	Muhimana	1	15	60
21	Rutaganira	1	15	60
22	Gatete	1	30	120
23	Nchamihigo	1	15	60
24	Rugambarara	1	20	80
		42	**794**	**3680**

Annex 2. Estimates Based on the Prosecutor's Figures for Present Detainees

	Case	No. of Accused	No. of Pros. witnesses	No. of hours for Pros. case-in-chief	No. of hours for Def. cross-examination	No. of hours for Def. case-in-chief	No. of hours for Pros. Cross-examination	Total hours
1	Butare	6	65	330	330	330	330	1320
2	Military I	4	100	500	500	500	500	2000
3	Muvunyi and Hategikimana	2	43	180	180	180	180	720
4	Seromba	1	20	100	100	100	100	400
5	Ndindabhizi	1	15	50	50	50	50	200
6	Military II	4	90	500	500	500	500	2000
7	Government I	4	50	300	300	300	300	1200
8	Government II	4	45	300	300	300	300	1200
9	Zigiranyirazo	1	30	100	100	100	100	400
10	Bikindi	1	30	100	100	100	100	400
11	Renzaho	1	30	100	100	100	100	400
12	Gikongoro	1	41	170	170	170	170	680
13	Bisengimana	1	15	50	50	50	50	200
14	Karera	1	15	50	50	50	50	200
15	Mpambara	1	30	150	150	150	150	600
16	Gacumbitsi	1	30	120	120	120	120	480
17	Rukundo	1	20	80	80	80	80	320
18	Nzabirinda	1	15	60	60	60	60	240
19	Nsengimana	1	15	60	60	60	60	240
20	Muhimana	1	15	60	60	60	60	240
21	Rutaganira	1	15	60	60	60	60	240
22	Gatete	1	30	120	120	120	120	480
23	Nchamihigo	1	15	60	60	60	60	240
24	Rugambarara	1	20	80	80	80	800	340
		42	**794**	**3680**	**3680**	**3680**	**3680**	**14740**